IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1585 OF 2014

United India Insurance Company Ltd., Through its Authorized Signatory, Divisional Office – I, Osmanpura, Aurangabad **APPELLANT**

V E R S U S

1] Sonal Dharmendra Pawar, Aged 37 years, Occupation Household, **RESPONDENTS**

2] Shrushti d/o Dharmendra Pawar, Aged 17 years, Occupation Education,

3] Ashutosh s/o Dharmendra Pawar, Aged 12 years, Occupation Education, Resident of As above

Since Respondent Nos. 2 and 3 are Minor, Under Guardianship of Respondent No.1 – Mother Sonal Dharmendra Pawar

4] Yuvraj Digambar Pawar, Aged 70 years, Occupation Nil

5] Sau. Babanbai Yuvraj Pawar, Aged 65 years,Occupation Household

All Resident of Plot No. 42 'Punal Apartment Professor Colony, Deopur, dhule, District Dhule

6] Sunil Gajanan Patil, Aged 40 years, Occupation Business, Resident of Plot No.25-A, Deshumukh Nagar, Amalner, District Dhule

Mr. S.G. Chapalgaonkar, Advocate for the Appellant

Mr. S.S. Patil, Advocate for Respondent Nos. 1 to 5

Mr. J.J. Patil, Advocate for Respondent No.6

CORAM : A.M. BADAR, J.

DATE : 26th NOVEMBER, 2015

ORAL JUDGMENT :

1. This is an Appeal filed by original Respondent no.2 – Insurance Company challenging the Judgment and Award in Motor Accident Claim Petition No. 937 of 2009, passed by the learned Member, Motor Accident Claims Tribunal, Dhule, thereby awarding compensation of Rs.17,05,000/- on account of death of Dharmendra Pawar in the accident which took place on 31st August, 2009. Respondent Nos.1 to 5 were original claimants, whereas Respondent No.6 (owner-cum-driver) was original Respondent No.1. For the sake of convenience, the parties shall be referred to in their original capacity.

2. ***Facts in nut-shell giving rise to the instant proceeding can be summarized as under*** :-

Original claimants – dependent legal representatives of deceased Dharmendra Pawar had claimed Rs.18,00,000/- towards compensation under Section 166 of the Motor Vehicles Act. According to them, deceased Dharmendra Yuvraj Pawar alongwith his friends was proceeding in an Indica Car owned by Respondent No.1 and insured with Respondent No.2 (present Appellant) bearing registration No. MH-19-Q-9862 on 30th August, 2009. Near village Borvihir on Chalisgaon-Dhule road, driver of the said Car, because of its high and excessive speed lost control over it. The Car turned turtle and because of injuries suffered, due to this accident Dharmendra Pawar died instantaneously. This accident has resulted in registration of Crime No. 197 of 2009 against the driver of the said Indica Car.

3. According to claimants, deceased Dharmendra Pawar was initially working as Primary School Teacher. However, after leaving that job, he started to work as Contractor. He used to undertake work of construction as well as painting the buildings. His net income was Rs.15,000/- to Rs.20,000/- per month. With these averments, Claimants,

who are his parents and chiildren filed claim for compensation of Rs.18,00,000/-.

4. Despite service of notice, Respondent No.1 – owner of the India Car failed to appear and contest the petition.

5. Respondent No.2 [present Appellant] - Insurance Company opposed the claim by filing Written Statement at Exhibit – 11 and denied the alleged income of deceased Dharmendra Pawar. According to Respondent – Insurance Company, he was traveling as fair paying passenger or gratuitous passenger. His risk was not covered under the policy. No extra payment was paid for covering the risk of occupant of private Car. The policy was only an act policy not covering the risk of third party. Respondent – Insurance Company denied this liability by contending that there was breach of conditions and terms of insurance.

6. In support of their claim, Claimants examined Claimant No.4 – Yuvraj (father of the deceased) and Claimant No.1 – Sonal (widow of the deceased) apart from three other witnesses to prove the income of the deceased. Those are Nitin Gulabrao Patil, Cashier in Jai Hind Educational

Trust, Deopur, Dhule, Laxman Prabhakarrao Kulkarni, Office Superintendent working with Panchayat Samiti, Shirpur and Vijay Gangaram Patil, an employee with Chatrapati Shivaji Public School, District Dhule. Respondents did not enter in the witness-box.

7. Upon hearing the parties, by the impugned judgment and Award, the learned Member of Motor Accident Claims Tribunal concluded that the accident happened because of rash and negligent driving of the Indica Car, in which Dharmendra Pawar died. His monthly income was assessed at Rs.12,000/- per month and by deducting 1/4th deposits towards his personal and living expenses loss of dependency of claimants was estimated at Rs.17,28,000/- by applying multiplier of 16. Apart from this, Rs.10,000/- were awarded for loss of consortium, Rs.5,000/- for love and affection and Rs.2,000/- for funeral. An amount of Rs.10,000/- was awarded towards pains and sufferings.

8. Heard Shri S.G. Chapalgaonkar, the learned counsel appearing for the Appellant. By taking me through the entire evidence on record, he drew my attention towards cover-note at Exhibit – 26 and submitted that as deceased was occupant of the private Car, his risk was

not covered. According to Shri S.G. Chapalgaonkar, the cover-note shows that no risk of passengers was covered by paying additional payment of premium.

9. Shri S.G. Chapalgaonkar, the learned counsel for the Appellant vehemently argued that the learned Tribunal mechanically came to conclusion that deceased was earing Rs.12,000/- per month. According to him, even if evidence of P.W. 3 – Nitin Gulabrao Patil, P.W. 4 – Laxman Prabhakarrao Kulkarni and P.W. 5 – Vijay Gangaram Patil is accepted then also it is not possible to conclude that the deceased was earning Rs.12,000/- per month. In submission of Shri S.G. Chapalgaonkar, learned counsel for the Appellant, entire bills and receipts produced on record reflects gross earnings of the deceased at less than Rs.2 Lacs and as such the income of the deceased estimated by the Tribunal is extremely on higher side. He further argued that the learned Tribunal had not undertaken an exercise of deducting an amount of expenses from gross earnings. Similarly, claimants have not produced on record documents showing payment of income-tax as well as bank statements of the deceased Dharmendra Pawar. Therefore, in his submission, by estimating monthly income of deceased of Rs.3,000/-, the Tribunal ought to have

assessed the compensation.

10. None appeared for Respondent Nos.1 to 5. The learned counsel appearing for Respondent No.6 adopted submissions of Shri S.G. Chapalgaonkar, the learned counsel for the Appellant.

11. As this Appeal is limited only to the extent of liability of the Insurance Company as well as quantum of compensation awarded to claimants, it is not necessary to traverse to other facts in respect of rash and negligent driving of the India Car.

12. At the outset, let us examine whether the learned Tribunal was right in assessing and estimating monthly income of deceased Dharmendra Pawar at Rs.12,000/- per month as the same appears to be the bone of contention. Evidence on record shows that deceased Dharmendra Pawar was holding educational qualification of passing Higher Secondary Examination. He was also holding Diploma in Education. However, he had opted for self employment and was doing the work as Contractor. Evidence of his widow Sonal shows that his deceased husband Dharmendra was taking contract of building as well as

painting work. Her evidence shows that the deceased used to take several building contracts from Zilla Parishad, Panchayat Samiti as well as from other private persons. As per evidence of Respondent No.1 – Sonal, the deceased used to earn Rs.20,000/- to Rs.25,000/- per month. She denied the suggestion that her deceased husband was not earning this much amount.

13. Yuvraj Pawar – father of the deceased has deposed in similar line and stated that by taking building and colour contracts, his deceased son was earning Rs.20,000/- to Rs.25,000/- per month.

14. Apart from oral evidence of interested claimants, they have adduced on record evidence of independent witnesses in order to prove income of deceased Dharmendra Pawar. Evidence of P.W. 3 – Nitin Gulabrao Patil, cashier of Jai Hind Educational Trust, Deopur, Dhule shows that in the year 2008, deceased Dharmendra Pawar had taken contract of painting the buildings of the trust and had thereby earned an amount of Rs.73,549/-. Evidence of P.W.3 – Nitin Patil is well supported by duly proved bills and receipts.

15. Evidence of P.W. 4 – Laxman Prabharrao Kulkarni shows that he is Office Superintendent of Panchayat Samiti, Shirpur. He deposed that in the year 2008, contract of wall painting was given by the Panchayat Samiti Shirpur to 'Jiajau Group of Arts' of which deceased Dharmendra Pawar was Proprietor and an amount of Rs.42,480/- was paid to him for this work. This evidence went unchallenged and is duly collaborated by the documentary evidence in the form of bills and receipts.

16. Then there is evidence of P.W.5 – Vijay Gangaram Patil, an employee of Chatrapati Shivaji Public School, which shows that the deceased had earned Rs.77,000/- by doing the work of painting of buildings. Non-inviting the tenders by the Trust and non-availability of the documentary proof of contractorship of the deceased brought on record from cross-examination of this witness, is of no avail to dispute earnings of the deceased from painting work of Chatrapti Shivaji Public School. Bills and receipts of this work is also proved by P.W. 5 – Vijay Patil.

17. If evidence of P.W. 3 – Nitin Gulabrao Patil, P.W. 4 – Laxman Prabhakarrao Kulkarni and P.W. 5 – Vijay Gangaram Patil is perused, then it is seen that in the year 2008, by undertaking three contract works, the

deceased had earned Rs.1,93,029/-. Evidence of widow Sonal Dharmendra Patil shows that deceased was taking several such contracts. As such, evidence of these three witnesses can be taken as illustrative evidence in order to prove income of the deceased. In the wake of trustworthy and satisfactory evidence on record, I am of the opinion that the learned Tribunal had rather modestly estimated monthly income of deceased Dharmendra Pawar at Rs.12,000/- per month. By no stretch of imagination it can be said to be exorbitant.

18. Considering this assessed income, the learned Tribunal had applied multiplier of 16 to capitalize the loss of dependency and considering the number of dependents and age of deceased, the exercise so done appears to be proper. Hence, quantum of compensation assessed by the learned Tribunal is representing just and reasonable compensation payable to the victim legal representative and therefore, there needs no interference at the hands of this Court.

19. The defence was taken before the learned Tribunal by the Insurance company that the deceased was an occupant of Indica Car which met with an accident. The policy was “act only policy” and was as

such not covering the risk of occupant. According to the Insurance company, the deceased was gratuitous passenger in the Indica Car.

20. At this juncture, this is to note that though such defence was taken by the Appellant – Insurance Company, no evidence was adduced by it in support of its contention regarding coverage risk of occupants of Indica Car. The copy of cover-note issued by the Appellant – Insurance Company is at Exhibit – 26. This cover-note shows that the Indica Car was covered with package policy of insurance and it was covering the risk of 4 + 1 passengers in that Indica Car. As such it cannot be said that the Insurance Policy was “act only policy”. The question is whether such package policy covers the risk of occupants of the private Car and what is the extent of the policy. In the case of ***Yashpal Lathra and another V. United India Insurance Co. Ltd. and another***, reported in ***2011 ACJ 1415,*** it was held that the package policy covers the risk of occupant of the private Car. In the matter of ***National Insurance Company Limited V. Balakrishnan and another***, reported in ***A.I.R. 2013 S.C. 473***. Honourable Supreme Court while approving the ratios of the judgment in the matter of Yashpal has held that there is no scintilla of doubt that comprehensive / package would cover liability of insurance company for

payment of compensation for occupants of the private Car. In view of this legal position no error can be found in the finding of the learned Tribunal that Appellant – Insurance Company is liable to pay compensation to claimants in respect of death of Dharmendra Pawar, an occupant of the private Car.

In the result, Appeal fails and same is dismissed with no order as to costs.

The amount deposited by the Appellant – Insurance Company be transmitted to the Motor Accident Claims Tribunal, Dhule for disbursement and apportionment in terms of Award.

(A.M. BADAR)
JUDGE

srm/26/11/2015